

EXHIBIT

"C"

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
2 (NEWARK VICINAGE)

3 CASE NO. 09-1279 (PGS)

4 MARK STEVENS,

5 Plaintiff, : Deposition of :

6 v. SILAS SMITH

7 CITY OF NEWARK POLICE DEPARTMENT, :
8 and in both their individual and :
9 professional capacity, POLICE :
OFFICER SILAS SMITH, JR., POLICE :
OFFICER CARLOS ALVARADO, POLICE :
OFFICER ANTHONY VENANCIO, POLICE :
10 OFFICER NEIVES, POLICE CHIEF :
ANTHONY S. CAMPOS, ABC CORPS 1-20 :
11 (said names being fictitious) :
JOHN DOES 1-20, (said names :
12 being fictitious, :

13 Defendants. : .

10:16:50 _____ /
14

15 TRANSCRIPT of testimony as taken by and before
16 LINDA M. SCHAAL, a Certified Court Reporter, and
17 Notary Public of the State of New Jersey, at the
18 offices of CITY OF NEWARK LAW DEPARTMENT, 920 Broad
19 Street, Newark, New Jersey, on Tuesday, May 4, 2010,
20 commencing at 12:15 p.m.

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1 A P P E A R A N C E S:

2

3 LAW OFFICE OF JOSEPH A. MASSOOD
4 50 Packanack Lake Road
5 Wayne, New Jersey 07470-6663
6 BY: ANDREW R. BRONSNICK, ESQ.
7 For the Plaintiff

8

9 CITY OF NEWARK LAW DEPARTMENT
10 920 Broad Street
11 Newark, New Jersey 07102
12 BY: AVION M. BENJAMIN, ESQ.
13 For the Defendants

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I N D E X

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WITNESS

PAGE

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SILAS SMITH

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Examination by Mr. Bronsnick

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E X H I B I T S

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IDENT.

DESCRIPTION

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1 S I L A S S M I T H , J. R., sworn.
 2 EXAMINATION BY MR. BRONSNICK:
 3 Q. Sir, what is your current rank?
 4 A. Detective central narcotics.
 5 Q. Can you provide your full name to the
 6 reporter, please?
 7 A. Silas, S-i-l-a-s, Smith, Jr.
 8 Q. Detective Smith, we're here today for
 9 the purpose of your deposition. Have you ever had
 10 your deposition taken before?
 11 A. Yes, I have.
 12 Q. On how many occasions?
 13 A. Maybe two.
 14 Q. So do you need me to go through the
 15 instructions?
 16 A. Not at all.
 17 Q. The only thing I will tell you is if
 18 you for some reason you don't understand a question
 19 that I ask, please tell me you don't understand a
 20 word, what I said or if I mumble.
 21 A. I have no problem doing that.
 22 Q. Because if you do answer a question
 23 that I asked you, I'm going to assume that you
 24 understood it.
 25 A. I totally understand.

1 Q. Who are you currently employed by?
 2 A. City of Newark Police Department and
 3 that's the Narcotic Gang Enforcement Division.
 4 Q. How long have you been a detective?
 5 A. Five-and-a-half years. I was with
 6 the Fugitive Task Force three-and-a-half and now two
 7 with narcotic and gang.
 8 Q. Prior to being detective what was
 9 your rank?
 10 A. Police officer detailed to the Street
 11 Crimes Unit where this incident took place.
 12 Q. Do you remember what year it was,
 13 month or year that you became a detective?
 14 A. Well, first I was a detective, went
 15 back to patrolman and now I'm a detective again.
 16 Q. So between being a detective with the
 17 Fugitive Task Force --
 18 A. I came to the Street Crimes Unit
 19 where this incident took place and then I got pulled
 20 into narcotics.
 21 Q. Is there a reason you went from being
 22 a detective back to the Street Crimes Unit?
 23 A. It was a change during election time.
 24 They were restructuring different departments and
 25 the lieutenant that took over that section or

1 captain ordered his own group.
 2 Q. Ordered his own group for which?
 3 A. Fugitive Task Force.
 4 Q. Because you were on Fugitive Task
 5 Force and someone new came in and they took you out
 6 of the Fugitive Task Force?
 7 A. And they bring their own group in
 8 that they're familiar with.
 9 Q. During the time that you were in the
 10 Street Crimes Unit was your rank still detective?
 11 A. No, back to patrolman.
 12 Q. Does being a detective affect your
 13 salary in any way?
 14 A. Just slightly. Certain perks, gas
 15 allotment and some uniform.
 16 Q. But not actual base salary?
 17 A. Not at all.
 18 Q. During the incident in question here
 19 involving Mark Stevens, March 24, 2007, during that
 20 time you were a patrolman with the Street Crimes
 21 Unit?
 22 A. Yes.
 23 Q. Prior to being a detective in the
 24 Fugitive Task Force what was your role?
 25 A. I was a patrolman in the East

1 District which is the Third Precinct.
 2 Q. How long did you have that position?
 3 A. About a year-and-a-half.
 4 Q. How about prior to that?
 5 A. Prior to that I was suspended.
 6 Q. For how long?
 7 A. Approximately two years.
 8 Q. How about prior to that?
 9 A. Prior to that I was in the North
 10 District where I got suspended from.
 11 Q. You were a patrolman?
 12 A. Yes.
 13 Q. How long were you a patrolman in the
 14 North District?
 15 A. That was a year.
 16 Q. How about prior to that?
 17 A. Sheriff's Department.
 18 Q. That's a county job?
 19 A. Yes, I transferred from the Sheriff's
 20 Department to the Newark Police Department in '97.
 21 Q. How long were you with the Sheriff's
 22 Department?
 23 A. One year.
 24 Q. Was that your first job after the
 25 academy?

	8		10
1	A. No, no. I went from -- that was my	1 telling the truth.	
2	first law enforcement job, the Sheriff's Department,	2 Q. Who was the director at that time?	
3	and then I came to the Newark Police Department.	3 A. Santiago. I'm not sure of his first	
4	Q. When did you go to the police	4 name.	
5	academy?	5 Q. How long was he the director for?	
6	A. '97. No, 3/98.	6 A. I think -- can I think?	
7	Q. Is that when you graduated or that's	7 Approximately '93 until about 2000, 2001, in that	
8	when you started?	8 area.	
9	A. That's when I started.	9 Q. Was there an investigation during the	
10	Q. You graduated July of '98?	10 time that you were suspended?	
11	A. That's correct.	11 A. Yes.	
12	Q. Were you in the police academy with	12 Q. That was done by Internal Affairs?	
13	Sergeant Venancio?	13 A. That's correct.	
14	A. Yes.	14 Q. Was there any action taken against	
15	Q. Did you know him back then?	15 you other than that suspension?	
16	A. Yes.	16 A. I was indicted on four counts.	
17	Q. So after the police academy you were	17 Q. What was the outcome from that	
18	a year at the Sheriff's Department?	18 indictment?	
19	A. No, with the Sheriff's Department you	19 A. We went to trial and the charges were	
20	work for a year before you go to the police academy.	20 dropped -- dismissed.	
21	What happened is during that appointment when they	21 Q. So a trial actually occurred?	
22	decided to pull me into the police academy from the	22 A. The trial occurred, six or seven week	
23	Sheriff's Department I got the phone call from	23 trial with a jury.	
24	Newark. I was starting the police academy	24 Q. How many police officers were	
25	department for the Sheriff's Department, left that	25 involved? Strike that.	
	9		11
1	academy and transferred to Newark.	1 How many police officers stood trial	
2	Q. You don't need to go to the police	2 with you?	
3	academy to work for the Sheriff's Department? Do	3 A. Five including myself.	
4	you have to go to the police academy to work at the	4 Q. Was one of those individuals Sergeant	
5	Sheriff's Department?	5 Venancio?	
6	A. To handle courts, no, and information	6 A. Yes.	
7	bureau, no. Anything handling prisoners that's when	7 Q. Do you remember if Sergeant Venancio	
8	you get sent. They use that as a probationary	8 had been dismissed as a defendant prior to the trial	
9	period to see if you want the job from what I'm	9 starting?	
10	hearing.	10 A. No, that's not sticking out. We were	
11	Q. When you were with the Sheriff's	11 all found not guilty.	
12	Department what were you doing?	12 Q. You remember there being five police	
13	A. BCI. I handled all the records when	13 officers that stood trial together?	
14	prisoners came in and prisoner intake logging and	14 A. I couldn't say as far as being pulled	
15	courts.	15 apart. I do remember the ending.	
16	Q. Let's discuss the suspension for a	16 Q. You remember there being five of you?	
17	moment. What was the basis for the suspension?	17 A. Yes.	
18	A. A child molester, Manuel Aleda was	18 Q. After the end of that trial were you	
19	caught having sex with a nine, ten-year-old boy. He	19 reinstated?	
20	was brought into the precinct and once he was put in	20 A. Yes, we were.	
21	the cell we found out later that the inmates beat	21 Q. As a result of that reinstatement did	
22	him up. Approximately two weeks later we were	22 you receive any of your back pay?	
23	called by Internal Affairs and asked if we knew	23 A. Not me. I personally had to work so	
24	anything about it. We had no knowledge at that	24 I didn't receive back pay.	
25	point. The director at that time felt we were not	25 Q. Did you have a job during the time	

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1 you were suspended for two years?

2 A. Yes, I did.

3 Q. What was that job?

4 A. I required my CDL license and I drove
5 tankers for Sunoco.

6 Q. Tell me what it is the Fugitive Task
7 Force does?

8 A. We have all high risk warrants in the
9 Essex County area.

10 Q. What constitutes a high risk?

11 A. Well, in the last six, seven years
12 whether we knew it or not it was a gang society and
13 we were handling -- most of our targets have been
14 high ranking gang members who are running for
15 shootings, robberies and/or dangerous drugs.

16 Q. So the warrants -- you would have to
17 serve them a warrant for their arrest?

18 A. We would hit the door early in the
19 morning or canvas the area looking for these
20 individuals in these high narcotic locations or high
21 gang and narcotic locations.

22 Q. Can you give me an approximate year
23 range that you worked for the Fugitive Task Force?

24 A. 2003, 2006.

25 Q. Now, explain to me with the Street

13

1 Crimes Unit what did that unit do?

2 A. Also we were handling street load.

3 I'll give you an example. Most of the areas that
4 you see if you're passing through Newark have sects
5 with a lot of Bloods, Crips, Netas. This is where
6 most of the shootings are taking place, high drugs
7 and gang violence. At roll call we are told to
8 target these areas.

9 Q. When you target these areas, what do
10 you physically do?

11 A. You kind of get familiar with these
12 areas, targets, individuals, body language, a lot of
13 the people that don't belong there. Most of the
14 time when they see us coming they begin running.

15 Q. Literally running?

16 A. Literally. The chirp is a chirp
17 phone, the Motorola chirp. They have -- we call
18 them lookouts. They are positioned in these areas
19 so as you're pulling up they're alerting their
20 bosses who normally have a place to hide, hide the
21 guns, hide the stash. This is going on daily.

22 Q. So when you go into these
23 neighborhoods, how is it you go in, as one patrol
24 car?

25 A. At that time we were riding mostly

14

1 three car teams.

2 Q. That's a deployment?

3 A. Actually for safety because we're
4 dealing with all areas that may have just had a
5 shooting.

6 Q. So if there are three cars
7 patrolling, approximately how many police officers
8 are in that patrol?

9 A. Normally six guys. If somebody is on
10 an arrest or somebody is in court, we normally try
11 to be at that time it was six guys.

12 Q. When you say at that time?

13 A. At that time it was Periera,
14 Gonzalez, Venancio, Nieves, Alvarado and myself.

15 Q. You're talking about March 2007?

16 A. The group that was together.

17 Q. You're no longer with the Street

18 Crimes Unit so you don't know what numbers they go
19 out with at this point in time?

20 A. No.

21 Q. What have you done in the last two
22 years as a detective with the Narcotic Gang
23 Enforcement Division?

24 A. I'm an investigator, plain clothes
25 and I'm mostly search warrants. I collect evidence,

15

1 gather information. We have actual undercover
2 police officers who are buyers. They buy drugs.
3 They set up locations and we gather information and
4 get a warrant signed by the judge.

5 Q. Do you patrol at all as part of your
6 job responsibilities?

7 A. No.

8 Q. Other than the suspension we already
9 spoke about with the Aleda case, have you been
10 suspended any other times?

11 A. Not at all.

12 MS. BENJAMIN: Objection.

13 Q. Are you aware of any other Internal
14 Affairs investigations with regard to your conduct
15 on the job other than the Aleda case?

16 A. No.

17 MS. BENJAMIN: Objection.

18 Q. As of March 2007 did you generally
19 work with another police officer during your patrols
20 as part of the Street Crimes Unit?

21 A. It was normally within those six,
22 five officers. We were a team. That was our
23 specific team.

24 Q. Again, it was Alvarado?

25 A. Periera, Nieves, of course Sergeant

<p style="text-align: center;">16</p> <p>1 Venancio, Juan. Juan's last name, oh Lord. Not 2 Gonzalez.</p> <p>3 Q. Ramos?</p> <p>4 A. Ramos.</p> <p>5 Q. Other than the six individuals that 6 you generally would patrol with as of March of '07 7 in the Street Crimes Unit, was there anyone else 8 that would have been part of that group?</p> <p>9 A. It was more a detail. We didn't 10 handle jobs in the cue or dispatch. We were 11 proactive. We went to these areas and we dealt with 12 the drugs, gangs, narcotics. That was our job.</p> <p>13 Q. What was your typical shift?</p> <p>14 A. Seven to three in the morning.</p> <p>15 Q. 7:00 p.m. to 3:00 a.m.?</p> <p>16 A. 3:00 a.m.</p> <p>17 Q. At what point in time during that 18 shift would you be going around to these 19 neighborhoods?</p> <p>20 A. Roll call was normally six 645. 21 After roll call we're out the door with assignments. 22 The area we hit is around 7:20. If things were 23 going the right way.</p> <p>24 Q. How long typically would you be in 25 the field for?</p>	<p style="text-align: center;">18</p> <p>1 arrested?</p> <p>2 A. I wish. Did I say that? I'm sorry.</p> <p>3 No.</p> <p>4 Q. Do you remember an individual named 5 Mark Stevens who you arrested on March 24, 2007?</p> <p>6 A. Yes.</p> <p>7 Q. Prior to that date had you ever met 8 or seen Mr. Stevens before?</p> <p>9 A. Never.</p> <p>10 Q. Tell me how it was that you came to 11 encounter Mr. Stevens on that date?</p> <p>12 A. Traveling south on South 14th Street 13 at the time listed and we noticed a silver or gray 14 two door Nissan sports car sitting by a fire hydrant 15 heavily tinted.</p> <p>16 Q. Meaning the windows were heavily 17 tinted?</p> <p>18 A. You couldn't see inside.</p> <p>19 Q. You were in one of the patrol cars?</p> <p>20 A. Yes.</p> <p>21 Q. Were you driving?</p> <p>22 A. No, I was a passenger.</p> <p>23 Q. Did the two patrol park?</p> <p>24 A. Yes. I would take the corner, the 25 left corner panel and the other vehicle used to</p>
<p style="text-align: center;">17</p> <p>1 A. According to which days. Once we 2 were assigned to whatever area they tell us to go 3 to, 416 sector, that sector as soon as you hit that 4 area it was just nonstop. It is nonstop. A lot of 5 the area shoot things occur while we're there.</p> <p>6 Q. I'm trying to figure out time-wise 7 during a typical shift 7:00 p.m. to 3:00 a.m. how 8 long would you typically be in the field?</p> <p>9 A. On a regular night we have an arrest 10 within the first hour.</p> <p>11 Q. You would be out the entire time?</p> <p>12 A. No, once you make the arrest you go 13 back and then another location.</p> <p>14 Q. You make an arrest, bring that person 15 back to the station and then go back out again?</p> <p>16 A. Yes.</p> <p>17 Q. Did you keep track of how many people 18 you arrested when you were on the Street Crimes 19 Unit?</p> <p>20 A. No.</p> <p>21 Q. Do you know if anybody kept track of 22 that?</p> <p>23 A. The back office.</p> <p>24 Q. Do you know if there was any sort of 25 award or compensation for how many people you</p>	<p style="text-align: center;">19</p> <p>1 block off because a lot of times in these areas if 2 you don't block them off, they're going to take off. 3 We deal with stolen cars daily.</p> <p>4 Q. So you block the vehicle --</p> <p>5 A. We were doing tactical driving.</p> <p>6 Q. Did you get out of your patrol car?</p> <p>7 A. Yes, I did.</p> <p>8 Q. Where did you go?</p> <p>9 A. I went to the passenger side.</p> <p>10 Q. Did anyone else go to the passenger 11 side?</p> <p>12 A. Minutes later Dave Nieves I saw him. 13 He was on my side with me.</p> <p>14 Q. Who was driving your patrol car?</p> <p>15 A. Carlos Alvarado, my partner.</p> <p>16 Q. Where did officers Alvarado go after 17 exiting the patrol car?</p> <p>18 A. The driver's side.</p> <p>19 Q. As you approached the passenger side 20 did you see anything? Could you see into the car at 21 all?</p> <p>22 A. We saw movement and that's how we 23 knew we had people in there so we used our 24 flashlights.</p> <p>25 Q. With your flashlights were you able</p>

20

1 to see in the car.

2 A. We were still having problems until
3 the driver put his window down a little bit and
4 Alvarado had the conversation asking him to lower
5 his window more.

6 Q. Did you hear anything that the person
7 seated in the driver seat was saying to Alvarado?

8 A. No, because the passenger already
9 started talking for him, yelling across at Alvarado.

10 Q. Did you hear what the passenger had
11 said?

12 A. Why are you here, why are you messing
13 with us, we're not doing anything, rambling.

14 Q. You were able to hear that through
15 the crack in the window?

16 A. From that side. That's when I'm
17 tapping asking him to let this one down which he did
18 a little bit so I could get -- enough to get my
19 flashlight so I can see the interior of the vehicle
20 to make sure there are no weapons for our safety.

21 Q. When you looked in the window into
22 the interior, did you see any weapons?

23 A. I saw the passenger's right hand
24 brushing. So I'm like okay, I said what's going on
25 there. I said put your window down. He refused to

21

1 put his window down. Then he put it down a little
2 more and then I noticed the floorboard. His
3 position he was leaning talking this way, but he's
4 breaking stuff with his foot. He was doing this
5 (indicating).

6 MS. BENJAMIN: You have to explain.

7 A. Well, what's happening is you're
8 sitting in the car, the passenger seat. He's
9 leaning on the arm -- the center console and he's
10 breaking items with his right foot.

11 Q. Did you hear anything breaking during
12 this time?

13 A. Immediately I signaled my partner to
14 let him know what I got. Popped the door, excuse
15 me, sir, step out. For what, for what. It became
16 confrontational verbally.

17 Q. Before you get there, I want to back
18 up a second just to see what you can remember. You
19 have an independent recollection of this particular
20 incident, correct?

21 A. Oh, yes.

22 Q. Is there a reason why you remember
23 this incident? I assume you've encountered many
24 individuals?

25 A. This is what I do for a living. I'm

22

1 trained. I have a pretty good memory on stuff like
2 that particular situation. Other things don't stick
3 out but that one does.

4 Q. Now, when the window was cracked open
5 and you were looking inside, you were able to see
6 this individual -- you said brushing?

7 A. Yes.

8 Q. Can you explain what you mean by
9 that?

10 A. Do you see where my hand is? This is
11 what I'm saying. I'm seeing more like this, which
12 is what I'm looking at.

13 Q. You're using your hand from your
14 groin area moving it away?

15 A. Pushing it onto the floor.

16 Q. Did you see any items drop?

17 A. Yes.

18 Q. What did you see drop?

19 A. We later found out what I thought was
20 to be vials of crack cocaine.

21 Q. Vials?

22 A. Two broken on the floor and one vial
23 I was able to salvage?

24 Q. Later on you saw two broken vials on
25 the floor?

23

1 A. Exactly.

2 Q. And one that was not broken?

3 A. Which I was able to recover, exactly.

4 Q. Now, while the window is still
5 cracked open, did you see any other type of movement
6 other than what you just described?

7 A. No. At that point I know he's going
8 to jail. At that point I'm attempting without
9 alerting him to get him out of the vehicle. Once he
10 actually popped the door, I'm not sure he was
11 planning on getting out, but once he popped the door
12 I opened the door.

13 Q. So whoever was sitting in the
14 passenger seat opened the door himself prior to you
15 opening the door?

16 A. Yes, along with yelling through that
17 maybe much of a window.

18 Q. What was he yelling?

19 A. F, fuck, every occurs word you can
20 think of. He went from zero to a hundred.

21 Q. Did you attempt to open that door
22 prior to the passenger opening it?

23 A. No. Once he did pop the door I
24 opened it right up. I stepped right in the middle
25 so I can have him come out because I didn't want him

24

1 try to get away before I could --

2 Q. I'm going to get there. I want to
3 take it step by step. Prior to him opening the door
4 did you attempt to open the door yourself?

5 A. I would think so. I can't remember
6 what I did exactly, but once that door was popped,
7 the door was open. Whether I did it or he did it,
8 that's when I was confronted with him face-to-face.

9 Q. So you don't have a recollection
10 whether the door was locked prior to him opening the
11 door?

12 A. No.

13 Q. How wide of an opening was the window
14 when you looked in to see this activity?

15 A. I was able to stick my flashlight
16 with my hand to illuminate the area because he would
17 never let it come all the way down. He kept it
18 maybe --

19 Q. When you were observing this brushing
20 with the hand and sort of stomping with the foot on
21 the floor --

22 A. Mashing.

23 Q. Mashing on the floor with the
24 passenger's foot this is while the window is cracked
25 open?

25

1 A. Yes.

2 Q. Were you able to see any activity in
3 the car prior to the window being cracked open?

4 A. No. Just movements. At that point
5 we knew we had people in the vehicle because that
6 heavily tinted once we got close enough to use the
7 flashlights we saw people moving around.

8 Q. Where was this vehicle parked?

9 A. Near a fire hydrant on South 14th
10 Street facing south between 16th and 15th Avenue.
11 Midway.

12 Q. It was in front of a fire hydrant?

13 A. Yes.

14 Q. Other than what you've already told
15 me, did this passenger say anything else to you or
16 the other officers?

17 A. He said a lot.

18 Q. While still in the car?

19 A. Yeah, why are you here, leave us

20 alone, while the brother is saying take it easy.
21 His brother is really cooperating. No, they ain't
22 supposed to be doing this. I'm going to talk
23 exactly -- they ain't supposed to do this, more of
24 that. Instead of you know here's our stuff let's
keep going. He was really nasty.

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1 Q. So the person in the driver's seat
2 was the brother of the individual in the passenger
3 seat?

4 A. Later found out to be, yes.

5 Q. The person in the driver's seat was
6 Phillip Stevens?

7 A. Yes.

8 Q. The person in the passenger seat was
9 Mark Stevens?

10 A. That's right.

11 Q. Had you ever encountered Phillip
12 Stevens prior to this day?

13 A. Never.

14 Q. Had you ever encountered Mark Stevens
15 prior to this day?

16 A. Never.

17 Q. How frequently would you have
18 patrolled that area of Newark over the years that
19 you were with the Newark Police?

20 A. I can't answer. I wouldn't know. If
21 I can say a lot, a lot.

22 Q. You had been there many times before?

23 A. Yes.

24 Q. You knew what was going on in that
25 neighborhood?

27

1 A. Yes.

2 Q. Was that a high crime area?

3 A. Yes, it was.

4 Q. What type of crimes would you
5 generally encounter in that area?

6 A. Heavy Bloods gang area, a lot of
7 heroin and cocaine and marijuana actually.

8 Q. Is there something about the Bloods
9 gang that allows you to know part of the Bloods gang
10 the way they present themselves?

11 A. During that time they were wearing a
12 color. Still a lot of red being worn, particularly
13 a bandana hanging on the right or the rear pocket.

14 Q. Anything with regard to their hair
15 style or anything of that nature that would allow
16 you --

17 A. The dreads -- no, no. Sometimes --
18 it's the color that would stick out. Now we later
19 found out they shared the block with the Crips. The
20 Crips didn't wear colors. That's from intel and
21 learning.

22 Q. So now we're at the point where the
23 passenger's window is cracked open and that
24 passenger finally opens the door, correct?

25 A. Yes.

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1 Q. Without going any further at that
2 point -- I understand the brother Phillip Stevens
3 was saying to Mark Stevens to calm down?

4 A. Yes.

5 Q. Did he say anything to the police
6 officers that you heard meaning Phillip Stevens?

7 A. Nothing stuck out.

8 Q. At that point in time when the
9 passenger opened his door where was Phillip Stevens?

10 A. He was still -- I really can't
11 remember because when it was all over he was outside
12 the vehicle standing face-to-face with Alvarado on
13 the driver's side so I'm thinking they were both
14 getting out at the same time. I don't remember
15 exactly when he got out because when my situation
16 was done he was out of the vehicle.

17 Q. So now, the passenger Mark Stevens
18 opens his door. Now explain to me what happened?

19 A. He attempted to run past me forcibly
20 with his head down and that's when the arrest took
21 place, the handcuffing took place.

22 Q. So tell me physically the best you
23 can remember you said Mr. Stevens, the door cracked
24 open and then you moved to open the door further?

25 A. I actually stood in the door -- I'm

29

1 standing in the door. Once I actually got it open
2 my body and him he's literally the midsection when
3 he stood up he brushed passed me his head hitting
4 this part of the body which I was taken back.

5 MS. BENJAMIN: Describe what part of
6 your body.

7 Q. You're pointing to your chin?

8 A. My chin and chest took the brunt. I
9 remember smelling his hair. Whatever he had on his
10 hair I could actually smell it.

11 Q. You got hit in the chin and chest
12 area?

13 A. The chin and chest area because he
14 was in this position.

15 Q. You're standing in the doorway,
16 Mr. Stevens is sitting. He goes from a sitting
17 position in the passenger side and hits your chin
18 and chest area?

19 A. Exactly.

20 Q. With what part of his head?

21 A. He had heavy dreads so it would be
22 this part of his head.

23 Q. You're talking about the top part of
24 his head?

25 A. Exactly and his forehead.

30

1 Q. What happens to your body as a result
2 of that contact?

3 A. Well, I use his body so I wouldn't
4 fall and we both went to the ground. When I pushed
5 him on the ground, I grabbed his arm with my weight,
6 leaned on top of him and handcuffed him.

7 Q. So you used the force of his body
8 coming at you --

9 A. Because if I was off balance he would
10 knock me to the ground.

11 Q. So you used the force of his body
12 coming at you to put him on the ground?

13 A. Yes.

14 Q. Was he -- did he ever fully stand up
15 in an upright position?

16 A. No.

17 Q. Did he attempt to hurt you in any way
18 meaning with his hands or fists?

19 A. By doing that if he had hit my lip it
20 would have been busted.

21 Q. Not if. I want to know what he
22 actually did?

23 A. No, no. I wasn't hurt. I was hit.

24 Q. What were you hit by?

25 A. His head.

31

1 Q. My question was did he try to hit you
2 with his hands or fists in any way?

3 A. No.

4 Q. Now, you indicated that he attempted
5 to run past you?

6 A. Yes.

7 Q. How much space, if any, was between
8 where you were standing in the doorway that would
9 allow him to run past you?

10 A. The force that he was using, if I
11 wasn't there, he would have easily run past us. He
12 used force to get out of the car. Normally you do
13 one of these. It was one of these (indicating).

14 Q. In order to run past you he had to
15 come into contact with you?

16 A. Exactly.

17 Q. Because you were standing in the
18 doorway?

19 A. Yes.

20 Q. Were you wearing a uniform at the
21 time?

22 A. Yes.

23 Q. When you had looked through the
24 mirror before the door opened, I assumed that you
25 identified yourself --

<p style="text-align: right;">32</p> <p>1 A. The window.</p> <p>2 Q. The window, I'm sorry. When you</p> <p>3 looked through the window and part of the door</p> <p>4 opening you identified yourself as a police officer?</p> <p>5 A. Yes. We have our police car</p> <p>6 illuminated with lights, we have partner saying how</p> <p>7 are you doing, Officer Alvarado, can I see your</p> <p>8 license, registration and insurance and no, what do</p> <p>9 you need that for.</p> <p>10 Q. Who said what do you need that for?</p> <p>11 A. The passenger.</p> <p>12 Q. Were you wearing a police hat?</p> <p>13 A. No. I have on the jacket we wear is</p> <p>14 the police logo here. Our shirts have the police</p> <p>15 patches and we have large police on our back in</p> <p>16 black and yellow.</p> <p>17 Q. How tall are you?</p> <p>18 A. Five-eleven.</p> <p>19 Q. Now, would it be fair to say you're a</p> <p>20 pretty physically strong person?</p> <p>21 A. Yeah.</p> <p>22 Q. Were you about this size back in</p> <p>23 March of 2007?</p> <p>24 A. I may have been a little bit more</p> <p>25 harder.</p>	<p style="text-align: right;">34</p> <p>1 Q. And Officer Nieves was standing</p> <p>2 toward the front part of the car?</p> <p>3 A. There you go.</p> <p>4 Q. So when the car door opened would</p> <p>5 Officer Nieves have been between -- sorry, the car</p> <p>6 door would have opened and Officer Nieves would have</p> <p>7 been on the opposite side of the car door?</p> <p>8 A. The car door was between Nieves and</p> <p>9 myself.</p> <p>10 Q. How much time elapsed between the</p> <p>11 time that Mark Stevens first cracked open the door</p> <p>12 until the time you put handcuffs on him?</p> <p>13 A. Seconds. The struggle, until I was</p> <p>14 able to control him within a minute he was</p> <p>15 handcuffed, a minute or two.</p> <p>16 Q. So the way you would describe it,</p> <p>17 from him attempting to run past you to the point in</p> <p>18 time he was on the ground was almost as if it was</p> <p>19 one full movement?</p> <p>20 A. Exactly.</p> <p>21 Q. Did you see Mr. Stevens, Mark</p> <p>22 Stevens, strike his face or head in any way on the</p> <p>23 ground?</p> <p>24 A. Not -- no. More if anything the</p> <p>25 chest.</p>
<p style="text-align: right;">33</p> <p>1 Q. You may have had more muscle tone</p> <p>2 back in March of '07?</p> <p>3 A. Yes.</p> <p>4 Q. Did you weigh more back in March of</p> <p>5 '07 than you do now?</p> <p>6 A. Maybe about seven pounds.</p> <p>7 Q. How much do you weigh now?</p> <p>8 A. 250, 248.</p> <p>9 Q. So back in March of '07 you were --</p> <p>10 A. Close to 260.</p> <p>11 Q. You said at some point that Officer</p> <p>12 Nieves was near you?</p> <p>13 A. Yes.</p> <p>14 Q. At the point in time that</p> <p>15 Mark Stevens exited the vehicle, where was Officer</p> <p>16 Nieves?</p> <p>17 A. Toward my left.</p> <p>18 Q. Toward the back of the car?</p> <p>19 A. No. The car is facing in this</p> <p>20 direction. Stevens exited the door here. Nieves</p> <p>21 was standing on that side of the door.</p> <p>22 Q. Just so the record is clear the way</p> <p>23 that car was facing, Mr. Mark Stevens exited the</p> <p>24 vehicle moving toward the back part of the car?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">35</p> <p>1 Q. Did you see Mr. Stevens injure</p> <p>2 himself in any way on his face?</p> <p>3 A. No.</p> <p>4 Q. Did you see any blood coming out of</p> <p>5 his face?</p> <p>6 A. None at all.</p> <p>7 Q. At any point in time between the time</p> <p>8 he was in the vehicle to the time that he was on the</p> <p>9 ground did you grab hold of Mr. Stevens in any way?</p> <p>10 A. To handcuff him, yes. I used minimum</p> <p>11 force to affect an arrest to bring him to the</p> <p>12 ground.</p> <p>13 Q. At any point in time did you lift him</p> <p>14 or remove him from the vehicle he was seated in?</p> <p>15 A. No.</p> <p>16 Q. At any point in time did you use your</p> <p>17 head to strike him in any way?</p> <p>18 A. No.</p> <p>19 Q. At any point in time did you use your</p> <p>20 hands to strike him in any way?</p> <p>21 A. No.</p> <p>22 Q. Was Mr. Stevens trying to physically</p> <p>23 avoid allowing you to put the handcuffs on him?</p> <p>24 A. Yes.</p> <p>25 Q. Did you do anything to permit you to</p>

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1 put the handcuffs on him?

2 A. Once I was able to grab his wrists I
3 was able to maneuver and pull it, a handcuffing
4 technique. I bring the first arm around and then I
5 asked him to give me the second arm. He was safely
6 and successfully handcuffed.

7 Q. What was he doing with his arms to
8 prevent you?

9 A. He wouldn't give it to me at that
10 point and then finally for some reason he just gave
11 me it. He was down, you know. I remember getting
12 one hand cuffed and waiting to get his other hand.

13 Q. Tell me when he's on the ground when
14 this is happening what part of your body is in
15 contact with him?

16 A. My knee is in his back area.

17 Q. Which knee?

18 A. My right knee.

19 Q. Were you using either of your hands
20 to also hold him down?

21 A. More of a leaning like this to grab
22 his hand and once I got his hand I was able to get
23 up and take the other hand.

24 Q. You're saying you were leaning with
25 your right elbow?

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1 A. Yes, in his back.

2 Q. You would have used your left hand to
3 grab his wrist to handcuff him?

4 A. Yes.

5 Q. Are you right or left-handed?

6 A. I'm righty.

7 Q. After the handcuffs were on him what
8 did you do?

9 A. We asked him for his information. At
10 that point he's still cursing and yelling and he was
11 placed in the rear of our marked patrol vehicle.

12 Q. Was anyone else in the rear of your
13 marked patrol vehicle?

14 A. Yes.

15 Q. Who?

16 A. I don't know his name, but another
17 gentleman we had just arrested.

18 Q. What did you arrest that gentleman
19 for?

20 A. Possession of cocaine.

21 Q. How was he carrying that cocaine?

22 A. In his right hand.

23 Q. The other individual?

24 A. Yes.

25 Q. Did he have it in a bag or vial?

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1 A. No. I would say we got lucky. When
2 we hit the corner of 14th Avenue, South 14th Street
3 -- the 14th Avenue area is a building which has a
4 glass door which we normally wait for buyers to come
5 out of. As we were pulling up he was coming out.
6 So he became startled as we approached him and it
7 was in is right hand.

8 Q. He wasn't holding powder in his hand?

9 A. No, I'm sorry, he had a vial of
10 cocaine in his right hand.

11 Q. Was it crack cocaine?

12 A. Yes.

13 Q. Did you test that crack cocaine from
14 that individual?

15 A. Yes, we did.

16 Q. It tested positive?

17 A. Positive.

18 Q. How do you test crack cocaine?

19 A. We have field testing kits that we
20 have and we break off maybe the smallest crumb
21 possibly and put it in that kit and if it turns
22 blue, it's a positive reaction.

23 Q. Is that something during that time in
24 March of '07, that kit, is that something you
25 normally carried with you?

39

1 A. No, it's in the typing area which at
2 that time would be in central processing. We have a
3 file cabinet where we keep all of our items for
4 testing.

5 Q. Do you remember from that other
6 individual that you arrested prior to Mark Stevens
7 if you tested the crack cocaine in the field?

8 A. No. There was no place to do that,
9 especially -- we wait to get back to the precinct
10 safely.

11 Q. What is the proper procedure for
12 securing the evidence after an arrest with something
13 like that vial of crack cocaine?

14 A. The officers who takes custody of the
15 property have an area on their body or a bag to keep
16 it in.

17 Q. How do you know what evidence you
18 collected from one person as opposed to --

19 A. You have a person who is designated
20 for each job for property.

21 Q. Do you remember who was designated to
22 the person you arrested prior to Mark Stevens?

23 A. Yes. Alvarado had the arrest for the
24 first guy and I ended up with the Mark Stevens
25 arrest.

	40		42
1	Q. So at the time that the Mark Stevens	1	A. I remember tinted windows and fire
2	arrest occurred who would have had the evidence from	2	hydrant.
3	the person arrested prior to Mark Stevens?	3	Q. I'm going to show you what was marked
4	A. Alvarado.	4	as P-2 for identification. It's a summons, correct?
5	Q. How long was Mark Stevens on the	5	A. Uh-huh.
6	ground in handcuffs?	6	MS. BENJAMIN: Yes?
7	A. I couldn't tell you exactly. Maybe a	7	A. Yes.
8	minute, approximately two minutes.	8	Q. It's a summons to Mr. Stevens for
9	Q. Did you leave him on the ground at	9	unclear plates?
10	any point in time and stand up?	10	A. Yes.
11	A. No, stand him right up and get him	11	Q. Do you remember him receiving a
12	out of there. In these areas the lounger you're	12	summons for that?
13	there the more confrontation you have with	13	A. Yes.
14	outsiders. Whatever arrests we do we do not stay	14	Q. Do you remember if his plates were
15	there long, especially if the vehicle is not being	15	unclear?
16	towed or anything. From that time from the ground	16	A. Yes.
17	he was in the vehicle.	17	Q. Does that help refresh your memory as
18	Q. At any point in time did you search	18	far as what type of summonses he's received?
19	Mark Stevens body?	19	A. No. If you look it's a totally
20	A. Yes.	20	different date.
21	Q. When was that?	21	Q. What date is that?
22	A. Before placing him in the rear of the	22	A. This is August 23rd of that year.
23	vehicle for safety for weapons or anything else.	23	Q. So you remember him getting a summons
24	Q. Do you literally pat him down?	24	for tinted windows?
25	A. Yes, we actually for bulges or	25	A. That was for unclear license plate.
	41		43
1	anything that may be harmful to us.	1	Q. You remember Phillip Stevens getting
2	Q. Did you ask him to open his pockets?	2	summons on March 24, 2007 --
3	A. No, he was handcuffed.	3	A. Yes.
4	Q. Did you go into his pockets?	4	Q. For tinted windows --
5	A. I checked the outside of his pockets	5	A. And fire hydrant.
6	for weapons.	6	Q. -- and fire hydrant.
7	Q. Did you physically go into any of his	7	After you put Mark Stevens in the
8	pockets?	8	patrol car did you get into the patrol car yourself?
9	A. No.	9	A. Yes.
10	Q. What was he wearing?	10	Q. Did you search the vehicle that
11	A. I couldn't tell you.	11	Phillip Stevens was -- strike that.
12	Q. Do you know if he was wearing a	12	The silver two-door car, did you
13	jacket?	13	search that car at any point in time?
14	A. I couldn't remember that. March	14	A. Yes. At that point I realized some
15	maybe, but I couldn't say what he had on. I don't	15	of the other vials, I'm going to say two, two that
16	remember.	16	were cracked, but the one I recovered I was able to
17	Q. Prior to putting him in the patrol	17	use that as evidence.
18	car did you have a conversation with any of the	18	Q. When you went to the car to recover
19	other police officers?	19	that evidence was Mark Stevens already in the patrol
20	A. Nothing that sticks out, no.	20	car?
21	Q. After Mark Stevens was in handcuffs	21	A. No. Actually that's when Nieves was
22	where was Phillip Stevens?	22	able to hold him. I recovered it, put it in my
23	A. Driver's side receiving summonses	23	pocket and placed him in the vehicle.
24	from Carlos Alvarado.	24	Q. While Mark Stevens was in handcuffs
25	Q. What was the summons he received?	25	standing who physically went to the car to

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1 recover --

2 A. Me.

3 Q. And Officer Nieves was standing next
4 to Mr. Stevens?

5 A. Yes, he was holding him for me.

6 Q. Tell me what you saw exactly when you
7 looked into that silver car?

8 A. I realized there was one full vial
9 left and the other spots two were crunched. I
10 recovered it and that was it.

11 Q. When you say crunched, the glass was
12 broken?

13 A. Yes.

14 Q. Was there any substance on the
15 ground?

16 A. They were both smashed in the carpet
17 unrecoverable. It was just powder then.

18 Q. Was it white powder?

19 A. Yes.

20 Q. Did you see the lids to the vials?

21 A. No.

22 Q. What type of lids would have been on
23 these vials?

24 A. A plastic cap.

25 Q. A black cap?

45

1 A. A plastic cap. I'm not sure of the
2 color, but the vials, the way they are constructed
3 you pop the caps on.

4 Q. They don't screw on?

5 A. No.

6 Q. Did you recover any of the crushed
7 items that were on the floor?

8 A. No. I would have cut my hands. No,
9 you don't try to recover nothing like that because
10 now it gets in your system.

11 Q. If you touch that material, it can
12 get into your system?

13 A. Yes, and break out, yes.

14 Q. Is there some sort of police
15 procedure to recover that evidence if necessary?

16 A. No.

17 Q. Well, would you have recovered the
18 mat and taken the whole mat in?

19 A. I would have, but now we're talking
20 glass mixed with dirt. I would have to have the
21 dirt or items in there, fabric, which is not good
22 because that testing kit is real sensitive. Now I'm
23 putting dirt and everything else in there. It
24 wouldn't be worth it. I had a full one. I had what
25 I needed.

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1 Q. Up to that point in time did your
2 skin ever come into contact with crack cocaine?

3 A. Yes.

4 Q. What type of reaction did you have?

5 A. More of an itch. It feels full and
6 tight.

7 Q. Now, what were the charges filed
8 against Mark Stevens?

9 A. Possession of CDS cocaine and
10 resisting arrest.

11 Q. There were from what you saw both wit
12 Mr. Stevens and you saw in evidence there were three
13 vials at one point in time?

14 A. Yes.

15 Q. Now, if you had recovered three
16 vials, would you have been able to charge him with
17 distribution?

18 A. No, it's under ten. That's personal
19 use for what we do, my appearance in court.

20 Q. Under ten what?

21 A. Under ten vials is possession unless
22 I'm seeing him actually distributing.

23 Q. Other than looking at that front
24 passenger seat on the ground, did you search any
25 other part of the car?

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1 A. Yes, I did.

2 Q. Where?

3 A. Under the seat. At this point I'm
4 looking for weapons. That's what we were doing at
5 the time for all the shootings and the vehicle being
6 in the city in that block that we're not familiar
7 with normally was a problem.

8 Q. Explain that to me.

9 A. You and I could not go sit on that
10 block on that particular street.

11 Q. Why is that?

12 A. It's a heavily -- it's a territory.

13 It's a gang territory. If you're not buying you
14 gotta go. You're not allowed to walk down that
15 street unless you're part of the drug trade. If
16 you're sitting there at night, you're somebody on
17 that block. That block receives complaints daily
18 from people who live there that are like hostages.
19 It's bad.

20 Q. So in March of 2007 if you lived in
21 that neighborhood you basically couldn't go out at
22 night?

23 A. No, you can't. Stray bullets,
24 robbery, witnessing robberies, shootings. It was
25 bad.

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1 Q. Does the City of Newark Police
 2 Department keep track of violent crimes?
 3 A. Yes.
 4 Q. Based upon neighborhood?
 5 A. Yes.
 6 Q. What neighborhood was this?
 7 A. That would be 416 sector of the West
 8 District or the Fourth Bureau.
 9 Q. So after you searched under the seat
 10 -- first of all what seat did you search under?
 11 A. Passenger.
 12 Q. Did you search the other side of the
 13 car?
 14 A. I didn't have to. Alvarado was
 15 there.
 16 Q. Do you know if Alvarado found
 17 anything?
 18 A. No.
 19 Q. No, you don't know or no, he didn't?
 20 A. No, he didn't find anything or there
 21 would be more charges.
 22 Q. Did you search the trunk of the car?
 23 A. No.
 24 Q. Did you search the back seat?
 25 A. Yes.

49

1 Q. Did you find anything in the back
 2 seat?
 3 A. Nothing in the back.
 4 Q. Did anyone else to your knowledge
 5 search any other part of the car other than
 6 Alvarado?
 7 A. I don't know. I can't recall.
 8 Q. Do you remember having have a
 9 conversation with Sergeant Venancio at the scene?
 10 A. I think at that point Sergeant
 11 Venancio was attempting to get information, his name
 12 and that's when he was yelling I'm not giving you my
 13 information. At that point we realized he wasn't
 14 going to give us the information on the street and
 15 we got him in the car and off to the precinct for
 16 the officers' safety.
 17 Q. At any point in time did you hear any
 18 police officers ask Phillip Stevens whether Mark
 19 Stevens had a criminal record?
 20 A. It's not sicking out.
 21 Q. Did you see any other police officers
 22 use any other type of force with regard to Mark
 23 Stevens --
 24 A. No.
 25 Q. -- to effectuate his arrest?

50

1 A. No.
 2 Q. Was Phil Stevens arrested?
 3 A. No.
 4 Q. It your understanding that Phil
 5 Stevens owned the car that was at issue here?
 6 A. I couldn't tell you. I didn't run
 7 the plate.
 8 Q. Is there a reason you can think of
 9 why Phillip Stevens wouldn't have been arrested if
 10 drugs were found in his car?
 11 A. Because of my personal knowledge of
 12 what I saw because normally he would. If it was
 13 found in plain view, whose car is it, the person
 14 operating the vehicle most times would have to go,
 15 but what I saw was good enough. It came from the
 16 chair that Mark Stevens was sitting in.
 17 Q. Did you have any discussion with any
 18 of the other police officers about the fact that
 19 Mark Stevens should not be arrested?
 20 A. No.
 21 Q. Did anyone say well, we should arrest
 22 Phillip Stevens too?
 23 A. Not at all.
 24 Q. It was just assumed?
 25 A. Assumed.

51

1 Q. You arrested Mark Stevens because you
 2 found drugs in the car?
 3 A. On Mark Stevens.
 4 Q. And on the ground in the car?
 5 A. Where Mark Stevens was sitting.
 6 Q. Right. Did you have a discussion or
 7 was there any discussion at the scene among the
 8 police officers about whether Phillip Stevens should
 9 also be arrested?
 10 A. No.
 11 Q. Did you speak to Phillip Stevens
 12 after Mark Stevens was arrested?
 13 A. I can't recall. There is no reason
 14 to.
 15 Q. Do you know where Phillip Stevens was
 16 standing at the time you were searching the car?
 17 A. The driver's side rear of the car.
 18 Q. Was he restrained in any way?
 19 A. At that time him an Alvarado were in
 20 conversation pertaining to his credentials.
 21 Q. So Phillip Stevens wasn't restrained
 22 in any way?
 23 A. No.
 24 Q. Do you know if handcuffs were ever
 25 applied to Phillip Stevens?

52

1 A. I can't recall.
2 Q. Did anyone ask Phillip Stevens to
3 come to the police station for questioning?
4 A. No.
5 Q. Did anyone give Mark Stevens Miranda
6 warnings?
7 A. No.
8 Q. Do you know if he was ever given
9 Miranda warnings?
10 A. I don't know.
11 Q. Would it have been your
12 responsibility to give him Miranda warnings?
13 A. Yes.
14 Q. But you never did?
15 A. No.
16 Q. Did he say anything in the car?
17 A. A lot.
18 Q. What did he say in the car?
19 A. He said -- I'm going to say the word
20 fuck maybe 30 times, yelling and screaming.
21 Q. During the time that you were in the
22 patrol car was the other individual in the patrol
23 car speaking at all?
24 A. No.
25 Q. Other than the cursing, did Mark

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1 activity in the car as you saw it through the
2 window?
3 A. Yes. No, with the window down.
4 Q. With the window down?
5 A. Yes.
6 Q. But only partially down?
7 A. Enough with an illuminated
8 flashlight. The cabin was illuminated.
9 Q. But you didn't have any physical
10 evidence at that point?
11 A. No.
12 Q. I'm going to show you what we've
13 marked as P-1 for identification in a previous
14 deposition. If you could just take a look at that
15 for a moment. Did you prepare this police report?
16 A. Yes.
17 Q. Based upon reviewing this police
18 report what time did this incident occur?
19 A. 2100 hours would be 9:00 p.m.
20 Q. If you need more time to look at
21 this, feel free. Is everything in this police
22 report accurate?
23 A. Okay.
24 Q. Is everything contained in this
25 police report accurate?

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1 Stevens say anything else while in the patrol car?
2 A. Curses. He's a very nasty man. I
3 thought maybe he was intoxicated.
4 Q. Could you smell any liquor on his
5 breath?
6 A. No. That's why I thought maybe he
7 was intoxicated with something because he wasn't
8 reasonable at all. He was very nasty.
9 Q. Did Mark Stevens -- going back to the
10 point in time between Mark Stevens exiting the car
11 and being placed under arrest did he swing his arms
12 at you in any way?
13 A. Resisting arrest -- when I was
14 attempting to cuff him he wouldn't give me his arms.
15 He was flailing. He wouldn't give me his arms until
16 I got one handcuff on and while swinging his hands I
17 had to grab his arm to force his arm around. It all
18 happened literally in seconds. Hands, head, push,
19 the whole thing.
20 Q. Prior to placing Mark Stevens under
21 arrest the basis you had to effectuate that arrest
22 was witnessing him through the crack of the window?
23 A. The cocaine, yes.
24 Q. The basis for the arrest at the point
25 you made the arrest was having witnessed his

55

1 A. Yes.
2 Q. Is there a reason you did not put in
3 the fact you found crushed vials into this police
4 report?
5 A. No. At this time saying it's a
6 reason because it wasn't being used as evidence,
7 there was no reason not to. What I had as physical
8 evidence was enough for possession.
9 Q. Did anyone assist you with this
10 police report?
11 A. Yeah, the team. When we make arrests
12 at that time we normally go down per arrest and one
13 person is the author, one person does the arrest
14 sheets, the CDRs and the property. We work as a
15 team so we can get back in the street fast.
16 Q. Now, the third page here is an arrest
17 report. Who prepared this document?
18 A. Smith/Alvarado so it looks like it
19 may have been Alvarado.
20 Q. There is a description under the
21 event saying "Above listed was arrested after being
22 in possession of CDS." Do you see that?
23 A. Yes.
24 Q. Who would have written that
25 description?

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1 A. The person that prepared this is
2 Alvarado.
3 Q. It indicates here that "The person
4 was resisting lawful arrest by swinging his arms
5 after lunging at the officers." Do you see that?
6 A. Yes.
7 Q. Is that a fair description about what
8 happened?
9 A. Yes.
10 Q. At what point in time did Mr. Stevens
11 swing his arms?
12 A. When I was attempting -- when he
13 wouldn't give me his hands.
14 Q. The next page is a use of force
15 document?
16 A. That's correct.
17 Q. Did you prepare that?
18 A. Yes, I did.
19 Q. What is the purpose behind preparing
20 this?
21 A. This is a contact sheet. What
22 exactly I did and force used, what type of force was
23 used, whether it's hands or object.
24 Q. What did you indicate here?
25 A. I indicated you can see hands and

58

1 A. Riding by in the streets, at the
2 movie theater where I work. I work -- I work my
3 regular job and part time for the City of Newark.
4 Q. What other job do you have at the
5 present time?
6 A. Are you asking me who I'm employed
7 with?
8 Q. Do you have a job other than the City
9 of Newark?
10 A. I work with the Newark Screens Movie
11 Theater.
12 Q. How long have you worked there?
13 A. Approximately five years.
14 Q. Where is that?
15 A. Springfield Avenue and Bergen Street
16 on the corner.
17 Q. You work there on the weekends?
18 A. Yes, just one day, sometimes two.
19 Q. So you see Mr. Stevens at that movie
20 theater?
21 A. A couple of times.
22 Q. Did you ever used to patrol any area
23 where he lived?
24 A. No. I worked part time near there
25 too.

57

1 fists.
2 Q. So that means you would have used
3 your hands and fists?
4 A. Yes. There is only one box for both.
5 So hands would have been if you could check off one,
6 but hands and fists is the box I checked off.
7 Q. Did you strike Mr. Stevens at any
8 point in time with your fists?
9 A. No.
10 Q. There is a box at the top that you
11 checked for violent?
12 A. Yes.
13 Q. That would have been something that
14 you used to describe Mr. Stevens?
15 A. Yes.
16 Q. Let me show you what was marked as
17 P-3 for identification. Do you recognize the
18 individual in that photograph?
19 A. Yes.
20 Q. Who is that?
21 A. Mark Stevens.
22 Q. Other than this incident, have you
23 seen Mark Stevens since the incident?
24 A. Plenty of times.
25 Q. Where did you see him?

59

1 Q. Where is that?
2 A. He used the live at Pilgrim Village.
3 It's a housing complex on Bergen and Mohamed Ali
4 Avenue.
5 Q. What did you do at Pilgrim Village?
6 A. Security.
7 Q. You saw him at that location also?
8 A. Yes.
9 Q. Have you had a conversation with
10 Mr. Stevens?
11 A. He had one with me while I was
12 walking away several times.
13 Q. Well, tell me the first time you can
14 remember speaking to him after the March 24, 2007
15 incident? Do you remember where that was?
16 A. I can't tell you exactly when it was,
17 but I remember walking through a parking lot and
18 he's yelling that's fucked up with a group of drug
19 dealers he hangs with. That's the guy Smitty, the
20 cop, right there that's fucked up.
21 Q. At the time that you saw him he was
22 with a bunch of drug dealers?
23 A. One of his friends just got out from
24 the feds, Keyon Smith. He was just released from
25 the feds. He did two years. That's one of his best

60

1 friends I see him with all the time.

2 Q. This incident was in a parking lot?

3 A. I patrol the parking lots at this
4 part-time job where I am.

5 Q. An outdoor parking lot?

6 A. Yes. When you pull into the parking
7 lot, the apartments sit on top of their garage so
8 they pull in and under.

9 Q. It's a covered parking lot?

10 A. Yes.

11 Q. You saw Mr. Stevens there with--

12 A. Several times.

13 Q. With Keyon Smith?

14 A. Yes.

15 Q. And you heard him yelling according
16 to you that's the cop?

17 A. Yes.

18 Q. Other than that description of what
19 he said, did he approach you and have a discussion
20 with you?

21 A. I was walking through the complex.
22 He was at his mailbox and he literally followed me.
23 Can we talk. I think there is something wrong with
24 him, but, yes, it happened. I get that so how much
25 I'm like numb. This happens to me pretty much every

61

1 day. I walk out to go to court somebody approaches
2 me, Smitty, what's up dude. That's over, handle it
3 in court. He would not let it go.

4 Q. Let me take you back to this parking
5 lot. What was he saying to you?

6 A. That I'm fucked up.

7 Q. Anything else?

8 A. You're a piece of shit, stuff like
9 that.

10 Q. Anything else? Did you have any more
11 substantive discussion other than that?

12 A. No. You want to know what happened?
13 I got upset and I'd leave.

14 Q. How long was that conversation?

15 A. He followed me for maybe two, three
16 minutes until I got back to the office.

17 Q. When you say he followed you, you
18 were walking?

19 A. The way the complex is set up when
20 you come out the stairs of the complex and this is
21 the garage you have to walk around 200 yards until
22 you get back to the entrance door of the rental
23 office where we normally are.

24 Q. So he followed you while you were
25 walking from the garage to the entrance?

62

1 A. Yes. That's one time when he
2 actually came in contact and words I could actually
3 hear what he was saying and asking me to talk to
4 him.

5 Q. That was about two or three minutes?

6 A. Yes.

7 Q. Other than saying that's fucked up
8 and things of that nature, was there any other
9 discussion?

10 A. He said he wanted to talk to me. One
11 day I'll be a man and talk to him.

12 Q. Anything else that you can remember
13 that he said?

14 A. Not at all.

15 Q. Did you respond to him in any way?

16 A. No.

17 Q. Did you tell him that you weren't
18 interested in speaking to him?

19 A. My body language was clear. I
20 ignored him. There was nothing to talk about. The
21 conversation would have went nowhere.

22 Q. Did you say anything to him at all?

23 A. No.

24 Q. Did you tell him to leave you alone?

25 A. I think my facial expressions were

63

1 enough.

2 Q. I'm just asking you if you told him
3 in any way to leave you alone?

4 A. No.

5 Q. What were you wearing at that time?

6 Were you in uniform?

7 A. No, plain clothes. It's part time
8 not through the police department. We're not
9 required to wear a uniform.

10 Q. Is there anything that would have
11 indicated to someone that you were doing security at
12 that location?

13 A. Yes, everybody in the complex knew we
14 were security. We go to meetings and we're
15 introduced to the tenant association who we are. If
16 they have any problems, we have a phone provided to
17 us for them.

18 Q. Did you wear anything on your body
19 that would have indicated to someone that you were
20 security?

21 A. No.

22 Q. That's one incident. Other than that
23 time can you recall another situation where you
24 encountered Mr. Stevens?

25 A. I'm going to say the movie theater

64

1 may have been more when I'm standing or walking
2 he'll give me one of these.

3 Q. He would nod?

4 A. Maybe five times. He would nod at me
5 or whatever group he's with he makes sure they know
6 who I am.

7 Q. Other than the time you saw him with
8 Keyon Smith --

9 A. Another drug dealer. That one sticks
10 out because I know he was part of a federal
11 investigation I was close to.

12 Q. Other than that time have you seen
13 Mark Stevens with any reputed gang members or drug
14 dealers?

15 A. His brother.

16 Q. To your knowledge has his brother
17 ever been arrested for drugs?

18 A. His brother was arrested, did time
19 for drugs prior to our meeting.

20 Q. Prior to March 24, 2007?

21 A. Yes. His brother runs -- still runs
22 the South 14th Street area along with a few other
23 Crip members or gang members.

24 Q. It's your understanding that Phillip
25 Stevens has a role in running that area on 14th

65

1 Street?

2 A. Positive.

3 Q. He's part of the Crips gang?

4 A. Yes.

5 Q. Is there a reason --

6 A. When I say -- he affiliates with
7 them. I'm not sure exactly what he does, but he's
8 known with the Crips gang members.

9 Q. Since March 24, 2007 are you aware of
10 any times that Phillip Stevens was arrested?

11 A. No.

12 Q. Do you still have any involvement in
13 patrolling or otherwise dealing with the 14th Street
14 area where this arrest of Mark Stevens occurred?

15 A. I've made several arrests there since
16 then.

17 Q. But is it a place that you normally
18 would go to as part of your job functions?

19 A. It's normally a place we're assigned
20 to go to. I've done 20 arrests there since this
21 incident.

22 Q. When you brought Mark Stevens to the
23 police station, did you have any conversation with
24 him?

25 A. Minimal, your name, address, date of

66

1 birth, at which point -- at that point Sergeant
2 Venancio had to talk to him because that's how nasty
3 he was. Sergeant Venancio was able to get his
4 information, begin typing. Once he prepared the
5 arrest report which would suffice, we walked him
6 over to the central processing area which is near
7 the door to the cell block, the outside door.

8 Q. Twenty feet away or so?

9 A. To the door which leads you into the
10 cell block.

11 Q. How long was Mr. Stevens being
12 processed before he was taken to the cell block?

13 A. We got his information and then sent
14 him there. We process the information without him
15 being there.

16 Q. Did you process the other individual
17 that was in your patrol car at the same time?

18 A. Yes, Alvarado did the paperwork on
19 him.

20 Q. I'm going to show you what we've
21 marked as P-6 for identification. Take time to
22 review that. Who prepared that report?

23 A. Carlos Alvarado.

24 Q. Did you have any role in preparing
25 that report?

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1 A. Carlos Alvarado.

2 Q. I'm asking you did you have any role
3 in preparing that report?

4 A. Other than me gathering information
5 or anything like that, I can't tell you exactly what
6 I did, but the arrest in the incident report was
7 prepared by Alvarado.

8 Q. I'm going to ask you to keep that in
9 front of you for a moment. This report related to
10 which individual?

11 A. This is -- the name is going to be
12 Tyrone Davis.

13 Q. Is Tyrone Davis the person you were
14 discussing before saying he had been arrested
15 immediately prior to Mark Stevens on March 24, 2007?

16 A. That's correct.

17 Q. And the time on this police report
18 for Tyrone Davis is?

19 A. 8:45.

20 Q. 8:45 p.m. So this report is dated
21 approximately 15 minutes before the Mark Stevens
22 report?

23 A. That's correct.

24 Q. What type of -- what was the purpose
25 of the arrest for Tyrone Davis?

68

1 A. He was in possession of one vial of
2 cocaine.

3 Q. I believe you indicated before the
4 officer assigned to secure the evidence for Tyrone
5 Davis was Officer Alvarado?

6 A. That's correct.

7 Q. But it says at the bottom there that
8 the CDS recovered was field tested by my partner
9 Smith at the scene.

10 A. I see that.

11 Q. Did you field test that crack cocaine
12 at the scene?

13 A. I can't recall.

14 Q. Is it possible that you would have
15 performed that test?

16 A. I could have because it was more of a
17 calmer situation possibly, but I don't remember.

18 Q. Before you had indicated typically
19 you would test --

20 A. And take it down to the precinct.

21 Q. So it wasn't common that you would
22 test the crack cocaine in the field?

23 A. Unless you have the testing kits on
24 you.

25 Q. So from this report we can assume

69

1 that you had the testing kit on you?

2 A. Exactly.

3 Q. Do you remember testing the crack
4 cocaine that you found during the Mark Stevens
5 arrest?

6 A. Not at all. Definitely not.

7 Q. Is there a reason you would not have
8 tested the crack cocaine that you found at the
9 Stevens arrest?

10 A. Because in the area we were at we
11 wanted to get out of there. You don't want to stick
12 around.

13 Q. So the third page here shows a
14 picture of Tyrone Davis?

15 A. Yes.

16 Q. Do you recognize this individual?

17 A. Yes.

18 Q. Have you arrested him -- strike that.

19 Have you seen him or had any contact
20 with him since March 24, 2007?

21 A. Not at all.

22 Q. Do you know what happened to the
23 charges that were pending against him?

24 A. No.

25 Q. So this is the individual that would

70

1 have been in the rear of the patrol car with Mark
2 Stevens?

3 A. Yes.

4 Q. Then also that night, I want to show
5 you another report we identified as P-5 for
6 identification. I ask you if you had any role in
7 preparing that report?

8 A. No, I had no involvement in this.

9 Q. What is the time on that report?

10 A. That's 1920, 7:20.

11 Q. So that would have been before the
12 Stevens and Tyrone incident?

13 A. That's why they weren't with us at
14 the scene. They were at the precinct.

15 Q. Who is they?

16 A. This is Periera. The author is
17 Periera so I'm going to assume Juan Ramos was with
18 him.

19 Q. At the top you see the names
20 Periera/Ramos?

21 A. Yes.

22 Q. Periera and Ramos would have started
23 with you that night but when they brought in this
24 individual --

25 A. That means they were already gone

71

1 because at 1920 Ramos had their first arrest right
2 out of the pocket. They weren't there at the scene.
3 We all met when we went back down to the precinct.
4 We all met up at the precinct when we did all the
5 paperwork.

6 Q. How can you tell that?

7 A. Because on the 802, the incident
8 report. I call it an 802.

9 Q. So because your name is on here what
10 does that indicate to you?

11 A. Approximately at the scene, I was in
12 the area, you know, maybe helped handcuff the guy,
13 something like that.

14 Q. You had indicated earlier that
15 Sergeant Venancio would have taken Mark Stevens'
16 information at the station?

17 A. Yes, because of the confrontation.

18 Q. What report specifically would
19 Sergeant Venancio have completed as part of that
20 intake?

21 A. He would do a record management form.
22 Record management form is their name, date of birth,
23 Social Security number, height, weight. What you
24 would see on the arrest report is the record
25 management sheet. Along with this. This is the

72

1 medical sheet. The record management form is not
2 here.

3 Q. Were you aware there was an Internal
4 Affairs investigation with regard to the Mark
5 Stevens arrest?

6 A. Yes, I was summoned in and had to
7 make a statement.

8 Q. Who spoke to you?

9 A. I can't recall the sergeant.

10 Q. What did you tell the sergeant?

11 A. What do you mean what did I tell the
12 sergeant?

13 Q. I'm assuming you had a discussion
14 about the events of March 24, 2007?

15 A. What was the question?

16 Q. Well, did you explain --

17 A. He asked me like we're talking how
18 the events took place. He was arrested for crack
19 cocaine, that was it and he did resist arrest.

20 Q. Do you remember what you told the
21 sergeant?

22 A. No. Meaning not verbatim, but I
23 answered whatever questions he asked.

24 Q. Up until the point of the Internal
25 Affairs investigation, were you aware of allegations

73

1 of use of excessive force by you?

2 A. No.

3 Q. The Internal Affairs report indicates
4 there was four allegations of excessive force. You
5 don't have any recollection of those?

6 A. No. Obviously they were unfounded.
7 There's a lot of things in our folder that we don't
8 know about. Because the allegation was made doesn't
9 mean I was aware of it.

10 Q. Do you remember the person you spoke
11 with as being Robert Kowalski?

12 A. Lieutenant Kowalski, yes, I do
13 remember that.

14 Q. Does that help refresh your memory?

15 A. Yes.

16 Q. Do you remember what you explained to
17 him as far as the Mark Stevens arrest?

18 A. The incident and how it unfolded.

19 Q. Were you aware of whether -- strike
20 that.

21 Do you know what happened to the
22 charges that were pending against Mark Stevens from
23 his arrest?

24 A. They were dismissed.

25 Q. At what point in time?

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1 A. I can't remember. We actually were
2 in court, Room 101 and there was a mini trial.

3 Q. Did you testify at that trial?

4 A. Yes.

5 Q. Do you remember what you testified
6 to?

7 A. The incident report.

8 Q. Who was prosecuting that case?

9 A. An attorney that was with Mark
10 Stevens.

11 Q. So Mr. Stevens' attorney wasn't
12 prosecuting?

13 A. You said who prosecuted the case.
14 No, we had -- forgive me for saying this, a person
15 that was picked out of another courtroom without
16 having a chance to talk to and ask me questions. I
17 don't know who the person was, but I met that person
18 five minutes before we walked in the door.

19 Q. Was that person a prosecutor with the
20 City of Newark?

21 A. Yes.

22 Q. Do you know if any other police
23 officers that were present at the scene during the
24 arrest of Mark Stevens testified at that trial?

25 A. Carlos Alvarado.

75

1 Q. Were you present during his
2 testimony?

3 A. Yes.

4 Q. Do you remember what Officer Alvarado
5 testified to at that trial?

6 A. No.

7 Q. Do you remember your specific
8 testimony at that trial?

9 A. Whatever questions were asked I can't
10 say specifically what I said.

11 Q. Other than your testimony an Officer
12 Alvarado's testimony, were you present during any
13 other portion of that trial?

14 A. During the testimony of Mark Stevens
15 and his brother Phillip Stevens.

16 Q. Did you listen to his testimony?

17 A. Yes.

18 Q. Did you disagree with the testimony
19 from Mark Stevens during that trial?

20 A. Totally.

21 Q. Do you remember what he said at that
22 trial?

23 A. I remember just being really
24 disgusted.

25 Q. Do you remember Mark Stevens

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1 indicating that you headbutted him?
2 A. Yes, I do remember that.
3 Q. You disagree with that
4 characterization?
5 A. Yes.
6 Q. Do you remember Mark Stevens
7 indicating that he had been bleeding from his face?
8 A. I don't remember that part.
9 Q. Do you remember Mark Stevens
10 testifying or alleging that you called him a stupid
11 fuck?
12 A. No.
13 Q. Do you remember if during March 24,
14 2007 at any point in time you called Mark Stevens a
15 stupid fuck?
16 A. No.
17 Q. No, you don't remember?
18 A. No, I don't talk like that.
19 Q. How about Phillip Stevens, you said
20 you were present during his testimony at trial. Do
21 you remember what he said?
22 A. No, I couldn't tell you what he said.
23 Q. Did you assist counsel for the City
24 of Newark in any way in responding to written
25 questions in this case?

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1 A. Yes.
2 Q. Other than the times that we've
3 discussed as far as your encounter with Mark
4 Stevens, have you had any other conversation --
5 A. No. Other than walking away, maybe
6 shooing, but no conversations.
7 Q. Now, when is the last time you
8 remember seeing Mark Stevens?
9 A. Last summer maybe. I had surgery in
10 July so maybe April, June. I remember it was warm,
11 but it wasn't July. It was before July.
12 Q. Where were you?
13 A. At the complex. At the Pilgrim
14 Village housing complex.
15 Q. Is that the time you told me he
16 followed you?
17 A. Yes.
18 Q. When was the last time you saw
19 Phillip Stevens?
20 A. I haven't seen him.
21 Q. Have you performed any investigation
22 lately where Phillip Stevens' name has come up?
23 A. That's confidential.
24 Q. Is there a reason you didn't give
25 Mark Stevens a Miranda warning at the time of his

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1 arrest?
2 A. He was yelling and screaming too
3 loud.
4 Q. Based upon the way the arrest
5 occurred, is it your position that you used
6 appropriate force to effectuate the arrest of Mark
7 Stevens?
8 A. Yes.
9 Q. Other than the vial of crack cocaine
10 that you obtained from the vehicle after Mark
11 Stevens' arrest, did you secure any other evidence
12 from that arrest?
13 A. No.
14 Q. I'm going to show you what we've
15 previously marked as P-4 for identification. It's a
16 document with a photocopy of a Phillip Stevens's
17 driver's license and several handwritten words. Do
18 any of these words have any significance to you?
19 A. No. The Break Up, Crank, Prestige,
20 Munich, Dejavu, Love Stinks, Descent, Skeleton Key,
21 Have Eyes.
22 Q. Do any of those have any meaning to
23 you?
24 A. No.
25 Q. Do you have any idea what this is?

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1 A. A copy of Phillip Stevens' driver's
2 license.
3 Q. But you have no idea what any of
4 these words mean as far as their significance?
5 A. Not at all.
6 Q. Do they have any connection to some
7 sort of CDS issue?
8 A. No.
9 MR. BRONSNICK: I have nothing
10 further.
11 MS. BENJAMIN: I don't have anything.
12 MR. BRONSNICK: Thank you.
13 (Deposition concluded at 1:43 p.m.)

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1 C E R T I F I C A T E
2

3 I, LINDA M. SCHAAAL, a Certified Court
4 Reporter and Notary Public of the State of New
5 Jersey, do hereby certify that prior to the
6 commencement of the examination the witness was
7 sworn by me to testify the truth, the whole truth
8 and nothing but the truth.

9 I DO FURTHER CERTIFY that the
10 foregoing is a true and accurate transcript of the
11 testimony as taken stenographically by and before me
12 at the time, place, and on the date hereinbefore set
13 forth.

14 I DO FURTHER CERTIFY that I am neither
15 a relative nor employee nor attorney nor counsel of
16 any party in this action and that I am neither a
17 relative nor employee of such attorney or counsel,
18 and that I am not financially interested in the
19 event nor outcome of this action.

20
21 

22 Notary Public of the State of New Jersey
23 Certificate No. XI01152

24
25